REMARKS

Withdrawal of the restriction requirement is respectfully requested. Applicants traverse the restriction requirement because the restriction requirement does not meet the requirements of 35 U.S.C. §121.

The Examiner has identified two sets of claims, claims 1-25 (Group I- structure claims) and claims 26-32 (Group II-method claims), in the restriction requirement. Both sets of claims are not independent and distinct from each other as required by 35 U.S.C. § 121.

The Examiner states that the two groups of claims are distinct from each other, because "the device of group I invention could be made by the processes materially different from those of the group II invention." Applicants disagree. The Examiner provides the example that the method of making the device of claim 12 could be performed by using gold. Assuming the Examiner's example is correct, Group II reads on such a limitation because independent claim 26 does not explicitly or implicitly state that gold cannot be used to form a reflective layer. Claim 26 doesn't even mention what materials could be used for a reflective layer and thus any material can be used. In other words, if someone performed all the processes in claim 26 and also forms a reflective layer of gold, he will have infringed claim 26.

The Examiner supports his argument by relying on claim 32 which states that the reflective layer is a metal comprising silicide. First, claim 32 does not mean that gold cannot also be present since the phrase "comprising" is used. Thus, gold and silicide can be used. However, it is Applicants' understanding that the Examiner is asserting that Secondly, if gold is used and no silicide is use, while claim 32 does not include this gold is used an no silicide is used in his materially different method example. While, claims 32 does not ready upon such, at least claim 26 of Group II does, as previously explained.

Applicants assert the Examiner is applying the restriction requirement improperly. The test for a restriction is not whether each dependent claim of Group I is mutually exclusive with all dependent claims of Group I. The Examiner has determined two groups: Group I and Group II and is making a restriction requirement between the asserted two inventions: 1) all the claims in Group I; and 2) all the claims in Group II. Under MPEP 804 a restriction is only possible if the two inventions are independent or distinct. The Examiner is relying upon MPEP 806.05(f) to show the claims are distinct, which is applied properly is a legitimate ground. For MPEP 806.05(f) to be properly applied the product of the "first invention" (Group I) needs to be shown to be able to be made by a materially different process than the "second invention" (Group II). Thus, it is the group not one claim within each group that is used for the comparison. Thus, just because one dependent claim has a certain limitation doesn't mean the whole Group has this limitation. Since claim 26 does not include the feature of claim 32, claim 26 includes the

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Examiner's example of a materially different process. Group II by its inclusion of claims 26-32 includes the Examiner's example. Thus, it is improper for the Examiner to only look at claims 32 and not all of Group II. Therefore, for the reasons stated above the groups have not been shown to be distinct and the restriction is improper.

In addition, the Examiner does not address the independent requirement. Thus, both sets of claims have not been shown to be independent and distinct as required by 35 U.S.C. § 121.

Although Applicants earnestly submit that the restriction requirement is in error and should be withdrawn. However, to comply with the requirement that Applicants must elect a group in order for the reply to be complete under 37 CFR 1.143, Applicants herein elect Group I. Regardless, Applicants assert that a materially different process, especially that suggested by the Examiner, than that stated in Group II has not been shown to be able to the structure in Group I. Please contact the Applicants' practitioner listed below if there are any issues regarding this communication or the current Application.

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